IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11351 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NALINI C RAVAL

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioner

MS. MANISHA LAVKUMAR ASTT GOVT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/12/2000

ORAL JUDGEMENT

Mrs.K.A.Mehta, learned advocate appearing on behalf of the petitioner and Ms.Manisha Lavkumar, learned AGP appearing on behalf of the respondents.

#. RULE. Ms. Manisha Lavkumar, learned AGP waives

service of rule on behalf of the respondents. With the consent of the both learned advocates appearing for the respective parties, this matter is taken up for final hearing today.

#. The brief facts of the present petition are as under :-

The husband of the petitioner was serving as Professor of Sanskrit in respondent No.4 College. The petitioner's daughter became serious and needed immediate open heart surgery and was required to be operated for Inter Cardiac Repair Surgery. As the said facility of such surgery was not available either at Jamnagar or at Ahmedabad, as apparent from the letter issued by the Irvin Hospital at Jamnagar,the petitioner and her husband had to take their daughter Archana to Christian Medial College and Hospital, Vellore for immediate surgery. The petitioner and her husband stayed there from 30th November, 1990 till 16th January, 1991. During period, necessary reports, diagnosis, tests etc. were carried and operation was carried out and post operation treatment was given to the daughter of the petitioner. Due to emergency, they had to rush to the hospital at Vellore and therefore, the husband of the petitioner couldn't obtained No Objection Certificate from the Government in advance for such surgery outside the State. On 29th January, 1991 petitioner's husband submitted all medical bills along with necessary reports for the operation and treatment undergone by their daughter. Again on 22nd April, 1991, the husband of the petitioner wrote a letter to the Principal of the respondent No.4 College in connection with the medical reimbursement to the tune of Rs.84,376/-. On 10th September, 1991, Principal of the respondent No.4 college recommended to the Secretary of Education Department for approving the medical expenses of the daughter of petitioner's husband. The Section Officer, Education Department vide his letter 9th October, 1991 asked the Principal of the respondent No.4 college to forward the claim of the petitioner along with necessary document to the Director of Higher Education. On 8th June, 1992, the Principal of the respondent College requested the Director of High Education to approve the claim of the husband of the petitioner. Even on 6th January, 1993 the petitioner requested the Director of High Education to make necessary payment of claim made by her husband for medial reimbursement. On 5th March, 1993 the petitioner who has not received any reply, wrote a letter to Principal of the respondent college and requested him to do the needful in the matter. The petitioner was requested that

she was required to produce certificate from Medial Superintendent of Civil Hospital, Ahmedabad. On 25th September, 1993, the Medical Superintendent, Irwin Hospital Jamnagar wrote a letter to the Director of Institute of Cardiology, Ahmedabad to issue No Objection Certificate for the reimbursement medical expenses incurred on the operation of the petitioner's daughter conducted outside the State of Gujarat as the facility of such operation was not available in Gujarat. On 4th October, 1993 the petitioner wrote a letter to State Minister of Health and pointed out about her claim. Even the State level Minister, on 12th January, 1994, in exercise of power under Section 17(2) of the Gujarat State Service (Medial Treatment) Rules, 1988 granted exemption to the case of the petitioner's daughter for medical reimbursement and directed to consider the case of the petitioner's daughter as a special case with retrospective effect. On 1st March, 1994, the petitioner was asked to send original bills to Health Department, Gandhinagar along with necessary papers. The petitioner was asked to send schedule II under Regulation 10 and accordingly, the petitioner sent the same. On 4th August, 1994, the principal of respondent No.4 college sent to the Superintendent and office of the Director of Higher Education all the original documents along with necessary papers. Even on 10th December, 1998, the Private Secretary to State level Minister of Education sent a communication in accordance with the decision taken by the Hon'ble Minister for necessary action to the Addl. Chief Secretary, Gandhinagar. Again State level Education Minister on 17th February, 1999 asked the Additional Chief Secretary to look into the matter as to what stage, the question of NOC was pending. On 17th April, 1999 the Director of Higher Education sent a copy of letter addressed to the Additional Chief Secretary, Education Department stating therein that by communication dated 15th October, 1999, they have not accepted the case of the petitioner and therefore, no payment can be made. However the grievance of the petitioner is that the copy of the said letter dated 15th October, 1999 has not been sent to the petitioner. Therefore, on 17th August, 2000, the petitioner claimed a copy of communication dated 15th October, 1999 . However, copy of the said letter has not been given to the petitioner. The petitioner has relied upon the Government Resolution wherein, it is specifically provided that if in the opinion of a competent Surgeon, necessary treatment is given only in a particular hospital and the delay will be fatal to the patient, several hospitals outside Gujarat were recognised for treatment. In para D(2) of the said resolution,

Christian Medial College and Hospital is specifically stated where such treatment is available. The daughter of the petitioner had undergone such treatment and surgery at this hospital. Therefore, ultimately by letter dated 15th October, 1999, claim of the medical reimbursement of the petitioner for her daughter has been rejected by the respondent authority, which has rise to filing of the present petition. However, it is pertinent to note that the respondent has not filed any reply to this petition by now.

#. Mrs.Mehta, learned advocate for the petitioner has relied upon two decisions of the Apex Cout and one recent decision of this Court reported in 2000 (1) GLH page 509 and submitted that it is not a case where the respondents are doubting that the petitioner's daughter has not undergone the operation at Vellure. The respondents are also not doubting the bill amount of the said hospital. Carrying this contention further, she submitted that in the matter in undergoing open heart surgery, the deceased aforesaid had utmost confidence and belief in professionals who had to perform this operation as well as even for post operation treatment in the hospital, was also very much adequate. It is a case of life and death of a person and under such peculiar and serious situation, she would not have liked to undergo for this serious operation at the hospital in which, she did not have confidence, faith and belief in the professionals and facilities so also the institutional efficiency. Mrs.Mehta, leaned advocate for the petitioner also urged that only poor persons who have no means to go to other Hospitals are going to Civil Hospitals. Low paid employees are only insisted to go there otherwise, higher-ups in the services and the officers prefer only to go, earlier to U.S.A., and now in the three or four renowned institutions of this Country. Mrs. Mehta further submitted that the petitioner was not able to obtain prior permission to go outside State medical institution for this operation on account of seriousness in the matter and under such situation, she could not indefinitely waited otherwise, the daughter of the petitioner would have died. She had gone to Vellure with hope and belief that post facto permission would be granted. Mrs.Mehta also submitted that post facto sanction can be granted by the Government and in case where the daughter of the petitioner had to undergo immediate operation, in that case, post facto sanction ought to have been granted. Mrs. Mehta has also submitted that letter dated 15th October, 1999 has not been sent to the petitioner and inspite of the specific demand of the copy of the said letter, the same has not

been sent to the petitioner but only in a mechanical manner after long lapse of time, the claim of the petitioner has been rejected by the respondent authority in clear arbitrary manner stating that the petitioner has not produced certificate of Doctor of the Civil Hospital which highly unjustified. Mrs. Mehta has also submitted that when State level Minister on 12th January, 1994, in exercise of power under Section 17(2) of the Gujarat State Service [Medical Treatment] Rules, 1988 granted exemption in case of the petitioner's daughter for medical reimbursement and directed to consider the case of petitioner's daughter as special case with retrospective effect but despite this fact, claim of the petitioner's daughter has been turned down by the respondent authority without any cogent reasons and only on the technical ground. Therefore, in short, the submission of Mrs.Mehta is that such technical approach by Welfare State authority, when operation and medical bill of the daughter of the petitioner are not doubted,therefore, in such cases, post facto sanction must have to be granted in favour of the petitioner.

#. Ms.Manisha Lavkumar, learned AGP has submitted as usual as what the Government Advocate on being harping on technicality and what she did in present case also. Ms.Manisha Lavkumar submitted that in such situation , if operation has been carried out without prior permission out side the Gujarat, will be burden on the State Government when such operations are available in State of Gujarat. However, in other case, if such operation is not available according to the opinion of the Civil Hospital, Ahmedabad then, to that effect, necessary certificate is required to be obtained by the petitioner prior to proceeding for surgery out of State Institution. Therefore, according to Ms.Manisha Lavkumar in such situation, the decision of the respondent authority is legal and valid.

#. I have considered the submissions of both the learned advocates for the parties and also perused the entire case papers so also the relevant documents which are annexed with the petition. I have also considered the decision of this Court in case of MADHAVDAS BHAGWANDAS KHUSHIRAMANI VS. STATE OF GUJARAT AND OTHERS reported in 2000 (1) GLH page 509 which is almost an identical case, examined by this Court and granted relief as claimed by the petitioner of that petition. The respondent State of Gujarat is Welfare State and its officers are officers of the Welfare State. Their approach should have been to see that where the Government servant puts a bona fide claim for reimbursement of his medical bill, it should

not be taken lightly and approach in such matters should have been justice oriented. In the present case, looking to the facts which are on record, not disputed by the respondents and no reply has been filed by the State Authority and due to emergency as the daughter of the petitioner who had heart problem by birth, had become so serious and needed immediate open heart surgery. She was required to be operated for the intra cardiac repair surgery and immediate operation of "Fallouts Tertralogy" was to be carried out, for that there was no facility either at Jamnagar or Ahmedabad or at any other place in State of Gujarat. The daughter of the petitioner had serious breathing and other problems and she was advised that she should be taken to Christian Medical College and Hospital at Vellure. In such circumstances, naturally some formality which were required to be complied with by the petitioner's husband, must not have been completed according to the administrative circulars / resolutions and rules but the fact remains that the daughter of the petitioner was operated at Vellure and medical bills issued by the hospital, which is in fact a recognised hospital as per the Government Circular dated 23rd August, 1990, were sent for reimbursement and in this petition, said facts are not disputed by the respondents. In light of this set of facts, according to my opinion, the claim of the petitioner is required to be allowed.

#. As a result of the aforesaid discussion, this petition succeeds and the same is allowed in the aforesaid terms. The respondents are directed to grant post facto sanction for the operation which was peformed on the daughter of the petitioner at Vellure, and pay the said amount of medical reimbursement of Rs.84,376/- to the petitioner within one month from the date of receiving the writ of this order. Rule is made absolute to the aforesaid extent. In light of the peculiar facts and circumstances, no order as to costs.

Date : 8-12-2000 [H.K.RATHOD, J.]

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